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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,124	09/18/2003	Chiao-Chung Huang	250122-1020	7157

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EXAMINER

LEE, LAURA MICHELLE

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

08/05/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/667,124

**Applicant(s)**

HUANG ET AL.

**Examiner**

LAURA M. LEE

**Art Unit**

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6 and 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, and 6-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s) Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s) Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/13/2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed 7/13/2008 have been fully considered but they are not persuasive. In response to the applicant's arguments that Meredith does not teach that the sliding piece is in contact with nor slides along the base, it is noted that base can be considered the combination of the table 12 and the rail assembly, 13.
3. In response to the to the applicant's arguments that Raizk does not teach that the sliding piece is in contact with nor slides along the centerline of the base, it is noted that centerline has not been defined to read over the interpretation that the centerline extends vertically between the two pillars, 32 and 33. Furthermore, it is considered that the sliding piece 21 is in contact with the base (38) and does slide on it.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 3, 4, 6, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Curtis et al. (U.S. Patent 5,123,581), herein referred to as Curtis. Curtis discloses an apparatus capable of splitting a test piece, comprising: a base (11) with a centerline (28); two pillars (12/14) disposed on the base separated by a fixed first interval (best seen in Figure 1) to support the test piece at a first side thereof (backside), wherein a connection line between the pillars is perpendicular to and divided equally by the centerline; and a sliding piece (i.e. 27) disposed on and in contact with the base at a second side (front side) of the test piece, which is opposite the first side (back side) thereof, wherein the sliding piece is slidable on the base (11) along the centerline (28) thereof and has two fingers (the two side pieces holding up the blade) parallel to the centerline separated by a second interval, which is smaller than the first interval, and a connection line between the tips of the fingers is perpendicular to and divided equally by the centerline.

In regards to claim 4, Curtis discloses wherein the base (11) has a straight groove (28) along the centerline, and the sliding piece has a protrusion (see Figure 1) movable in the groove along the centerline.

In regards to claim 6, Curtis discloses wherein the base (11) has a straight groove (28) along the centerline, the sliding piece has a protrusion (see Figure 1) movable in the groove along the centerline, and the width of the protrusion substantially matches the width of the groove in the base, such that the sliding piece (27) is movable in the groove (28).

In regards to claim 7, Curtis discloses an apparatus (Figure 1) for splitting a test piece, comprising: a base (11) having a groove (28) formed along a centerline (imaginary line that equally divides the base) of the base (28); two pillars (12/14) disposed on the base (11) and separated by a fixed first interval to support the test piece, wherein a connection line between the pillars is perpendicular to and divided equally by the centerline; and a sliding piece (27), disposed on and in contact with the base (11), having a protrusion (see Figure 1) slidable in the groove, wherein the sliding piece (27) has two fingers (the two side pieces holding up the blade) parallel to the centerline and separated by a second interval, which is smaller than the first interval, and a connection line between the tips of the fingers is perpendicular to and divided equally by the centerline.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 6 and 7 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Meredith et al. (U.S. Patent 6,561,068), herein referred to as Meredith in view of Sato et al. (U.S. Patent 5,060,548). Meredith discloses an apparatus for splitting a test piece, comprising: a base (table 12 and rail assembly 13) with a centerline (i.e. imaginary line extending along the slot in table 12, best seen in Figure 2); two pillars (23s, 23r) disposed on the base separated by a fixed first interval (best seen in Figure 2) to support the test piece at a first side thereof (backside), wherein a connection line between the pillars is perpendicular to and divided equally by the centerline; and a sliding piece (i.e. 16) disposed on the base at a second side (front side) of the test piece, which is opposite the first side (back side) thereof, wherein the sliding piece is slidable along the centerline (via the blade) and has two fingers (blade guard, 21) parallel to the centerline separated by a second interval, which is smaller than the first interval, and a connection line between the tips of the fingers (Y) is perpendicular to and divided equally by the centerline. Although, it would appear that to function properly the guard would need to have a slit in order to pivot upwardly as shown in Figure 3, to the extent that it can be argued that Meredith does not disclose that the guard, 21, is separated to form two fingers, attention is directed to the Sato circular saw and guard. Sato discloses another guard for a circular saw that is formed in two parts to protect the blade and user from both sides of the blade. As best shown in Sato, Figure 18, the guard is split to form two "fingers" that protect the user from both sides of the blade. As circular saw guards are old and well known in the art and as they perform an equivalent function of user protection, it would have been

obvious to one having ordinary skill in the art at the time of the invention to have substituted the Sato blade guard for the Meredith blade guard as either guard works to protect the user.

In regards to claim 2, Meredith discloses wherein the base (12) has two pivot points (the screws, not numbered best shown in Figure 2) at both sides of the centerline to install the pillars (23s, 23r).

In regards to claim 3, Meredith discloses wherein the pivot points (screws) are separated by the first interval, which is divided equally by the centerline.

In regards to claim 4, Meredith discloses wherein the base (12) has a straight groove (see Figure 2) along the centerline, and the sliding piece has a protrusion (blade) movable in the groove along the centerline.

In regards to claim 6, Meredith discloses wherein the base (12) has a straight groove (see Figure 2) along the centerline, the sliding piece has a protrusion (blade, 18) movable in the groove along the centerline, and the width of the protrusion (blade, 18) substantially matches the width of the groove in the base, such that the sliding piece (16) is movable in the groove via the blade.

In regards to claim 7, Meredith discloses an apparatus (Figure 1) for splitting a test piece, comprising: a base (table 12 and rail assembly 13 ) having a groove (base slot, see Figure 2) formed along a centerline (imaginary line that equally divides the base) of the base (12) ; two pillars (23s, 23r) disposed on the base (12) and separated by a fixed first interval to support the test piece, wherein a connection line between the pillars is perpendicular to and divided equally by the centerline; and a sliding piece (16),

disposed on the base (12), having a protrusion (blade, 18) slidable in the groove, wherein the sliding piece (16) has two fingers (blade guard sides) parallel to the centerline and separated by a second interval, which is smaller than the first interval, and a connection line between the tips of the fingers is perpendicular to and divided equally by the centerline.

8. Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raizk et al (U.S. Patent 3,157,235), herein referred to as Raizk in view of Borisov et al. (SU 197708), herein referred to as Borisov.

In regards to claim 1, Raizk discloses an apparatus for splitting a test piece, comprising: a base (38; Figure 3) with a centerline (an imaginary line disposed along the longitudinal axis of the dropping bar, 21); two pillars (32/33) disposed on the base (38) separated by a fixed first interval to support the test piece (35) at a first side (backside) thereof, wherein a connection line between the pillars (32/33) is perpendicular to and divided equally by the centerline; and a sliding piece (breaking tip, 23) disposed on the base (via vertical legs 11) at a second side (front side) of the test piece, which is opposite to the first side (backside) thereof, wherein the sliding piece is slidable along the center line (by pinion, 31 and corresponding teeth, 24);

Raizk discloses one finger, but does disclose that the sliding piece has two fingers parallel to the centerline separated by a second interval, which is smaller than the first interval, and that the connection line between the tips of the fingers is perpendicular to and divided equally by the centerline. However, attention is directed to



the Borisov device that discloses stock braking machine with two symmetrical shoulders (2) equidistant from the stops. Borisov discloses that the use of the two shoulders improves the broken stock surface quality by eliminating compressive stress in the break zone. It similarly would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the Raizk device to have utilized two fingers (2) as taught by Borisov on the sliding member (23) instead of just the one to improve the broken test piece surface quality. Additionally, it is noted that although the combination of the Borisov and Raizk device would incorporate the shoulders on the moving member, instead of the non-moving member as taught by Borisov, one having ordinary skill in the art would have recognized that providing the shoulders on the moving or non-moving member (i.e. reversing the four reaction points) would still provide an equal although opposite reaction (i.e. breaking) force on the center of the beam, that would still enable the device to perform the identical, equivalent splitting function. Additionally, it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 16 and that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

9. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curtis et al. (U.S. Patent 5,123,581), herein referred to as Curtis. Curtis does not disclose the means by which pedestals, 12 and 14 are attached to the base 12. However, the examiner takes Official Notice that attachments using a threaded screw

and mating hole are very old and well known in the art as a common means of securely, yet removably locking two items together and it would have been obvious to utilize such a construction to mount the pedestals to the base.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA M. LEE whose telephone number is (571)272-8339. The examiner can normally be reached on Monday through Friday, 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on (571) 272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3724

/Laura M Lee/

Examiner, Art Unit 3724

7/24/2008

/Boyer D. Ashley/

Supervisory Patent Examiner, Art Unit 3724